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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 HILLARY WALLS,

8 Plaintiff,

9 v.

No. C12-5350 BHS/KLS

10 BOWMAN, CPM RON KNIGHT, L.
11 BELANGER, LT. D. FEDDERSON,
12 SGT. KIRK JESSEE, CUS GAINES,
13 RN2 CINDY LOIACONO, DR.
14 EDWARDS, JOHN DOES 1-2
(CORRECTIONS OFFICERS), and
15 JOHN DOES 1-2 (DOCTORS),

16 Defendants.

**REPORT AND RECOMMENDATION
NOTED FOR: June 15, 2012**

17 This civil rights action has been referred to United States Magistrate Judge Karen L.
18 Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff Hillary Walls is
19 presently confined at the Washington State Penitentiary in Walla Walla, Washington. Under
20 separate Orders, Plaintiff has been granted leave to proceed *in forma pauperis* and the Court has
21 directed service of the Plaintiff's complaint. At the time he filed his complaint, Plaintiff also
22 filed a Motion for Temporary Restraining Order. ECF No. 7. In this pleading, Plaintiff requests
23 that the Court issue declaratory and injunctive relief against the Defendants. Defendants have
24 not yet been served in this matter and the Court has no jurisdiction over them. The undersigned
25 recommends that the Plaintiff's motion be stricken from the Court's docket at this time. The
26 Court does not reach the merits of Plaintiff's motion.

DISCUSSION

Under Federal Rule of Civil Procedure 65(a)(1), no preliminary injunction can be issued without notice to the opposing party. A temporary restraining order may be granted under Rule 65(b), but only if:

- 1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and
- 2) the [applicant] certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

If a plaintiff seeks relief from the Court, he must set forth his requests in a pleading or motion and that he must serve copies of all pleadings and motions on all defendants through their counsel of record pursuant to Fed.R.Civ.P. 5(b)(1). Pursuant to Fed.R.Civ.P. 5(d), Plaintiff is also required to attach and file a certificate of service stating that he has served all defendants with the pleading and/or motion every time he files and serves a document. Unless otherwise ordered, all motions will be decided by without oral argument and parties are not to appear on the date the motion is noted unless directed. CR 7(b)(4).

Accordingly, the undersigned recommends that Plaintiff's motion (ECF No. 7) be **stricken from the Court's docket**. Plaintiff may file a motion for temporary restraining order and serve it on all Defendants after Defendants have been served with his complaint and have entered an appearance in this matter. Plaintiff should keep in mind that any issues raised in any such motion must be related to the issues raised in his complaint and he must establish the following: (1) a likelihood of success on the merits, (2) a likelihood of irreparable injury to the plaintiff if injunctive relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129

1 S.Ct. 365, 376, 172 L.Ed.2d 249 (2008) (quoting *Amoco Prod. Co. v. Gambell*, 480 U.S. 531,
2 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)). If Plaintiff does re-file his motion, he must also
3 file a certificate of service stating he has served all Defendants, through their counsel, with the
4 motion. The motion may be scheduled on the Court's calendar for the third Friday after filing
5 and service of the motion.
6

7 **CONCLUSION**

8 The undersigned recommends that the Plaintiff's motion for preliminary injunction (ECF
9 No. 7) be **stricken** from the court's docket. The Court does not reach the merits of the Plaintiff's
10 motion.

11 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
12 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
13 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
14 *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
15 Clerk is directed to set the matter for consideration on **June 15, 2012**, as noted in the caption.
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18 **DATED** this 24th day of May, 2012.

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21 Karen L. Strombom
22 United States Magistrate Judge
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